

GOVERNMENT PROPOSED JURY INST. NO. 120The Nature of the Offense Charged

Count \_\_\_\_ of the indictment [*information*] charges that the defendant \_\_\_\_\_ was required by law to file a tax return for the tax year 19\_\_, on or before the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, and that the defendant willfully failed to file such a return.

If failure to file is being presented to the jury as a lesser included offense, the following may be helpful: **1**

*[The law permits the jury to determine whether the government has proven the defendant \_\_\_\_\_ guilty of any offense that is necessarily included in the crime of willfully attempting to evade or defeat a substantial tax charged in Count \_\_\_\_ of the indictment.*

*So, if the jury should unanimously find the defendant "not guilty" of the crime of willfully attempting to evade or defeat a substantial tax as charged in Count \_\_\_\_ of the indictment, then the jury must proceed to determine whether the government has proven the guilt of the defendant as to the offense of willful failure to file a tax return which is necessarily included in the charge of willfully attempting to evade or defeat any tax.*

*The nature of the included offense of willful failure to file a tax return is that the defendant \_\_\_\_\_, was required by law to file an income tax return for the tax year 19\_\_, on or before the \_\_\_\_ day of \_\_\_\_\_, and that the defendant willfully failed to file such a return.]*

***NOTE***

**1** This segment of the instruction conflicts with Tax Division Policy on lesser included offenses which is that ***neither*** party is entitled to an instruction that a willful failure to file (26 U.S.C. 7203) is a lesser-included offense of a ***Spies***-evasion offense. This position reflects the Government's adoption of the "strict elements" test of ***Schmuck v. United States***, 489 U.S. 704 (1989). See Tax Division Memoranda dated February 15, and March 15, 1993, respectively, on "Lesser Included Offenses in Tax Cases," published in Chapter 3 of this ***Manual***, *supra*.

GOVERNMENT PROPOSED JURY INST. NO. 122

Failure to File -- Statute

Section 7203 of Title 26 of the United States Code provides, in part, that:

Any person required \* \* \* (by law or regulation) \* \* \* to make a return \* \* \* who willfully fails to \* \* \* make such return \* \* \* at the time or times required by law or regulations, \* \* \* shall be guilty [*of an offense against the laws of the United States*].

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26 U.S.C. § 7203.

Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.10 (modified)

GOVERNMENT PROPOSED JURY INST. NO. 123Failure To File -- The Essential Elements of the  
Offense Charged

In order to sustain its burden of proof for the crime of willful failure to file a tax return as charged in Count \_\_\_\_ of the indictment [*information*] [*as the included offense of wilfully attempting to evade or defeat a tax as charged in Count \_\_\_\_ of the indictment*], **1** the government must prove the following three (3) essential elements beyond a reasonable doubt:

**One:** The defendant \_\_\_\_\_ was required by law or regulation to file a tax return concerning his [her] income for the taxable year ended December 31, 19\_\_;

**Two:** The defendant failed to file such a return at the time required by law; **2** and

**Three:** In failing to file the tax return, the defendant \_\_\_\_\_ acted willfully.

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Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.11

**NOTES**

**1** This segment of the instruction conflicts with Tax Division Policy on lesser included offenses which is that *neither* party is entitled to an instruction that a willful failure to file (26 U.S.C. 7203) is a lesser-included offense of a *Spies*-evasion offense. This position reflects the Government's adoption of the "strict elements" test of *Schmuck v. United States*, 489 U.S. 704 (1989). See Tax Division Memoranda dated February 15, and March 15, 1993, respectively, on "Lesser Included Offenses in Tax Cases," published in Chapter 3 of this *Manual*, *supra*.

**2** If April 15th fell on a Saturday, Sunday, or legal holiday, the appropriate date in the indictment or information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. NOTE that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

GOVERNMENT PROPOSED JURY INST. NO. 124

Failure to File -- Offense Charged

The defendant, \_\_\_\_\_, is accused of failing to file an income tax return for the year \_\_\_\_\_.

It is against federal law to fail to file a required income tax return. For you to find \_\_\_\_\_ guilty of this crime, you must be convinced that the government has proved each of these things beyond a reasonable doubt:

**First**, that \_\_\_\_\_ received income of [*state applicable dollar amount*] or more between January 1 and December 31 of [*year*].

**Second**, that \_\_\_\_\_ failed to file an income tax return as required by [*April 15, 19\_\_*].

**Third**, that \_\_\_\_\_ knew he was required to file a return.

**Fourth**, that \_\_\_\_\_ failed to file on purpose, and not as a result of carelessness.

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Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1991 Supp.),  
Section FJC 115 (modified)

GOVERNMENT PROPOSED JURY INST. NO. 125

Failure to Pay Tax or File Tax Return -- Offense Charged

Title 26, United States Code, Section 7203, makes it a crime for anyone to willfully fail to file a federal income tax return when he is required to do so by the Internal Revenue laws or regulations. "Willfully" means with intent to violate a known legal duty.

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

***First:*** That the defendant received income of [*state applicable dollar amount*] or more between January 1 and December 31 of 19\_\_;

***Second:*** That the defendant failed to file an income tax return as required by [*state applicable deadline date, e.g., April 15, 19\_\_*];

***Third:*** That the defendant knew he was required to file a return; and

***Fourth:*** That the defendant's failure to file was on purpose, and not as a result of accident, negligence or inadvertence.

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***Pattern Jury Instructions, Criminal Cases***, Fifth Circuit (1990 Ed.), Substantive Offense Instructions, No. 2.89

GOVERNMENT PROPOSED JURY INST. NO. 126Failure to Pay Tax or File Tax Return -- Offense Charged

The defendant is charged in Count \_\_\_\_\_ of the indictment with failure [*to pay tax*] [*to file a tax return*] \_\_\_\_\_ in violation of Section 7203 of Title 26 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

*First*, the defendant [*owed income tax*] [*had gross income of more than \$*\_\_\_\_\_] for the calendar year ending December 31, 19\_\_.

*Second*, the defendant failed to [*pay the tax*] [*file an income tax return*] \_\_\_\_\_ by April 15, 19\_\_; and

*Third*, the defendant acted for the purpose of evading his [her] \_\_\_\_\_ duty under the tax laws and not as a result of accident or negligence.

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Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1991 Supp.), Section 9-183

GOVERNMENT PROPOSED JURY INST. NO. 127

Failure to File Tax Return -- Offense Charged

Title 26, United States Code, Section 7203, makes it a Federal crime or offense for anyone to willfully fail to file a federal income tax return when he is required to do so by the Internal Revenue laws or regulations.

The Defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

**First:** That the Defendant was required by law or regulation to make a return of his income for the taxable year charged;

**Second:** That the Defendant failed to make a return at the time required by law; and

**Third:** That the Defendant's failure to make the return was willful.

A person is required to make a federal income tax return for any tax year in which he has gross income in excess of \_\_\_\_\_.

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Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1991 Supp.), Section 11-147



GOVERNMENT PROPOSED JURY INST. NO. 128The Requirement to File a Return--Explained

A person is required to file a federal income tax return for any calendar year in which he [she] has gross income in excess of \$\_\_\_\_\_. Gross income means the total of all income received before making any deductions allowed by law.

Gross income includes the following: (1) Compensation for services, including fees, commission and similar items; (2) Gross income derived from business; (3) Gains derived from dealings in property; (4) Interest; (5) Rents; (6) Royalties; (7) Dividends; (8) Alimony and separate maintenance payments; (9) Annuities; (10) Income from life insurance and endowment contracts; (11) Pensions; (12) Income from discharge of indebtedness; (13) Distributive share of partnership gross income; (14) Income in respect of a decedent; and (15) Income from an interest in an estate or trust.

For the crime of willful failure to file a tax return, the government is not required to show that a tax is due and owing from the defendant. Nor is the government required to prove an intent to evade or defeat any taxes.

A person is required to file a return if his [her] gross income for calendar year 19\_\_ exceeded \$\_\_\_\_\_, even though that person may be entitled to deductions from that income so that no tax is due.

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Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.12

GOVERNMENT PROPOSED JURY INST. NO. 129The Requirement to File a Tax Return

A single person [*under*] [*over*] sixty-five years old was required to file a federal income tax return for the year(s) [*insert years charged*] if he [she] had gross income in excess of [*insert amount*].

A married individual was required to file a federal income tax return for the year(s) \_\_\_\_\_, if he [she] had a separate gross income in excess of \$\_\_\_\_\_, and a total gross income, when combined with that of his or her spouse, in excess of \$\_\_\_\_\_ where [*either*] [*both*] [*is*] [*are*] [*over*] [*under*] sixty-five years old. **1**

Gross income includes the following: [*Compensation for services, including fees, commissions and similar items*] [*Gross income derived from business*] [*Gains derived from dealings in property*] [*Interest*] [*Rents*] [*Royalties*] [*Dividends*] [*Alimony and separate maintenance payments*] [*Annuities*] [*Income from life insurance and endowment contracts*] [*Pensions*] [*Income from discharge of indebtedness*] [*Distributive share of partnership gross income*] [*Income in respect of a decedent*] and [*Income from an interest in an estate or trust*]. **2**

The fact that a person may be entitled to deductions from income in sufficient amount so that no tax is due does not affect that person's obligation to file.

The government is not required to show that a tax was due and owing or that the defendant intended to evade or defeat the payment of taxes, only that he [she] willfully failed to file a return.

If you find beyond a reasonable doubt that the defendant had the required gross income in [*insert year*], then the defendant was required to file a tax return on or before [*insert date, e.g. April 15, 19\_\_*].

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Devitt, Blackmar and O'Malley, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.12 NOTES.

***NOTES***

**1** Where more than one year is charged and the gross income amount requiring that a return be filed differs in amount, it will be necessary to set forth the appropriate gross income for each of the years in issue. Note also that gross income requirements may vary from year to year depending on the amount allowed as an exemption, the age of the defendant, and, in the case of a married defendant, the age of the spouse. 26 U.S.C. § 6012

**2** The instruction should be simplified by eliminating sources of income not shown by the evidence.

GOVERNMENT PROPOSED JURY INST. NO. 131Time Required by Law

The second element of the offense of failure to file is that the defendant failed to file a *timely* income tax return for each of the years charged in the indictment [*information*].

The law provides that a return made on the basis of the calendar year shall be made on or before the 15th day of April, following the close of the calendar year, except that when April 15th falls on a Saturday, Sunday, or legal holiday, returns are due on the first day following April 15th which is not a Saturday, Sunday, or legal holiday. <sup>1</sup>

If you find beyond a reasonable doubt that the defendant had the required gross income in [*Year, e.g., 1993*], then, as a matter of law, the defendant was required to file a tax return on or before [*Date, e.g., April 15, 1994*].

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26 U.S.C. §§ 6072, 6081, 7503

**NOTE**

<sup>1</sup> For the calendar years 1987 and 1990 through 1993, individual income tax returns had to be filed on, or before, April 15th of the next year; for the calendar years 1988 and 1989, returns had to be filed on, or before, April 17, 1989 and April 16, 1990, respectively.

Returns made on the basis of a fiscal year are generally required to be filed on or before the 15th day of the fourth month following the close of the fiscal year. 26 U.S.C., § 6072(a). Calendar year corporate returns are due on or before the 15th day of March following the close of the calendar year; fiscal year corporate returns are due on or before the 15th day of the third month following the close of the fiscal year. 26 U.S.C., § 6072(b)

Note that the statutory due dates should be adjusted so as to account for any extensions of time for filing a return.

GOVERNMENT PROPOSED JURY INST. NO. 132Willfulness

The third and final element that the government must prove beyond a reasonable doubt in order to establish the offense of willful failure to file income tax returns is that the defendant's failure to file returns was "willful."

The word "willful" means a voluntary, intentional violation of a known legal duty. Willfulness, in the context of a failure to file an income tax return, simply means a voluntary, intentional violation of a known legal duty to make and file a return.

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*Cheek v. United States*, 498 U.S. 192, 201-202 (1991)

*United States v. Pomponio*, 429 U.S. 10, 12 (1976)

**COMMENTS**

**1** It is not necessary to define the term "willfully" in a tax case in terms of "bad purpose" or "evil motive." *United States v. Pomponio*, 429 U.S. 10, 12 (1976).

**2** Willfulness has the same meaning in the felony and misdemeanor sections of the Internal Revenue Code. *United States v. Pomponio*, 429 U.S. 10, 12 (1976).

**3** See also instructions on willfulness set forth as a part of the instructions on 26 U.S.C. § 7201, *supra*.

GOVERNMENT PROPOSED JURY INST. NO. 133Failure To Pay -- Willfulness Defined

The specific intent of willfulness is an essential element of the offense of willful failure to pay one's income taxes. The term willfully used in connection with this offense means a voluntary, intentional violation of a known legal duty.

The failure to pay income taxes is willful if the defendant's failure to act was voluntary and purposeful and with the specific intent to fail to do what he [she] knew the law requires to be done; that is to say, with intent to disobey or disregard the law that requires him [her] to pay federal income taxes.

On the other hand, the defendant's conduct is not willful if you find that he [she] failed to pay his [her] income taxes because of negligence (even gross negligence), inadvertence, accident, mistake, or reckless disregard for the requirements of the law, or due to his [her] good faith misunderstanding of the requirements of the law. **1**

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*Cheek v. United States*, 498 U.S. 192, 201 (1991)

*United States v. Pomponio*, 429 U.S. 10, 12 (1976)

*United States v. Ausmus*, 774 F.2d 722, 725-726 (6th Cir. 1985)

**NOTE**

**1** In light of the decision in *Cheek v. United States*, 498 U.S. 192 (1991), care should be taken to ensure that an instruction on the good faith defense does not suggest that a claimed good faith belief as to the requirements of the law or a claimed good faith mistake of law must be objectively reasonable to negate willfulness. However, instructions informing the jury that it may consider the reasonableness of a claimed belief in determining whether a defendant actually held the belief have been held to be consistent with *Cheek*. See, e.g., *United States v. Grunewald*, 987 F.2d 531, 536 (8th Cir. 1993).

GOVERNMENT PROPOSED JURY INST. NO. 134Good Faith Belief Defense -- Failure to File

In the context of Section 7203, the element of willfulness is established by proving that the defendant had knowledge of his [her] legal obligation to file a tax return but, nevertheless, voluntarily and intentionally chose not to do what the law required.

Defendant's conduct is not "willful" if his [her] failure to file a tax return was due to negligence (even gross negligence), inadvertence, accident, mistake, or reckless disregard for the requirements of the law, or was the result of a good faith misunderstanding of the requirement of the law that he [she] file a return.

In this connection, it is for you to decide whether the defendant acted in good faith -- that is, whether he [she] sincerely misunderstood the requirements of the law -- or whether the defendant knew that he [she] was required to file a return and did not do so. **1** This issue of intent, as to whether the defendant willfully failed to file an income tax return, is one which you must determine from a consideration of all the evidence in the case bearing on the defendant's state of mind.

It should be pointed out, however, that neither a defendant's disagreement with the law, nor his [her] own belief that such law is unconstitutional -- no matter how earnestly held -- constitutes a defense of good faith misunderstanding or mistake. It is the duty of all citizens to obey the law whether they agree with it or not.

The only purpose necessary for the government to prove in this case is the deliberate intention on the part of the defendant not to file tax returns, which he [she] knew he [she] was required to file, at the time he [she] was required by law to file them.

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Devitt and Blackmar, *Federal Jury Practice and Instructions* (4th Ed. 1990), Section 56.26 (modified)

*Cheek v. United States*, 498 U.S. 192, 201 (1991)

*United States v. Murdock*, 290 U.S. 389, 396 (1933)

*United States v. Mueller*, 778 F.2d 539, 541 (9th Cir. 1985)

*United States v. Aitken*, 755 F.2d 188 (1st Cir. 1985)

*United States v. Burton*, 737 F.2d 439, 442 (5th Cir. 1984)

*United States v. Koliboski*, 732 F.2d 1328, 1331 (7th Cir. 1984)

*United States v. Grumka*, 728 F.2d 794, 797 (6th Cir. 1984)

*United States v. Ness*, 652 F.2d 890, 893 (9th Cir. 1981)

*United States v. Miller*, 634 F.2d 1134, 1135 (8th Cir. 1980)

*United States v. Ware*, 608 F.2d 400, 405 (10th Cir. 1979)

*United States v. Edelson*, 604 F.2d 232, 235 (3d Cir. 1979)

#### **NOTE**

**1** In light of the decision in *Cheek v. United States*, 498 U.S. 192 (1991), care should be taken to ensure that an instruction on the good faith defense does not suggest that a claimed good faith belief as to the requirements of the law or a claimed good faith mistake of law must be objectively reasonable to negate willfulness. However, instructions informing the jury that it may consider the reasonableness of a claimed belief in determining whether a defendant actually held the belief have been held to be consistent with *Cheek*. See, e.g., *United States v. Grunewald*, 987 F.2d 531, 536 (8th Cir. 1993).



GOVERNMENT PROPOSED JURY INST. NO. 136Willfulness -- Good Faith Belief Defense

The third element which the government must prove beyond a reasonable doubt is that the defendant's failure to make the return in question was willfully committed.

The term willfully for purposes of these instructions means a voluntary, intentional violation of a known legal duty.

The failure to make a timely return is willful if the defendant's failure to act was voluntary and purposeful and with the specific intent to fail to do that which he [she] knew the law required, that is to say, with the intent to disobey or disregard the law that requires him [her] to make a timely return.

The willfulness which the government must prove beyond a reasonable doubt does not require the government to prove that the defendant had a purpose to evade a tax or to defraud the government.

The failure of a taxpayer to have or keep records adequate to permit him [her] or his [her] agents or employees to prepare accurate tax returns is no legal justification for not filing a timely income tax return.

The only justification for not filing a tax return when the same is required by law to be filed is a good faith misunderstanding by the taxpayer as to his [her] legal obligation to file the return **1** or an accidental, inadvertent, careless, negligent, or even grossly negligent failure to file such return.

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*United States v. Wilson*, 550 F.2d 259, 260 (5th Cir. 1977)

***NOTE***

**1** In light of the decision in *Cheek v. United States*, 498 U.S. 192 (1991), care should be taken to ensure that an instruction on the good faith defense does not suggest that a claimed good faith belief as to the requirements of the law or a claimed good faith mistake of law must be objectively reasonable to negate willfulness. However, instructions informing the jury that it may consider the reasonableness of a claimed belief in determining whether a defendant actually held the belief have been held to be consistent with *Cheek*. See, e.g., *United States v. Grunewald*, 987 F.2d 531, 536 (8th Cir. 1993).

GOVERNMENT PROPOSED JURY INST. NO. 138Willfulness -- Failure to File/Good Faith Belief Defense

Willfulness is an essential element of the crime of failure to file an income tax return. The term "willfully" used in connection with this offense means a voluntary, intentional violation of a known legal duty .

Defendant's conduct is not "willful" if he [she] acted through negligence, even gross negligence, inadvertence, accident, or mistake, or due to a good faith misunderstanding of the requirements of the law. **1** However, mere disagreement with the law in and of itself does not constitute good faith misunderstanding of the requirements of the law, because it is the duty of all persons to obey the law whether or not they agree with it. Also, a person's belief that the tax laws violate his [her] constitutional rights does not constitute a good faith misunderstanding of the requirements of the law. Furthermore, a person's disagreement with the government's monetary system and policies does not constitute a good faith misunderstanding of the requirements of the law.

*[Where appropriate, an explanation of the evidence introduced by the defendant and its place in the jury's deliberations may be included here. For example . . . The defendant has introduced evidence of advice he [she] heard given by speakers at meetings, tape recorded lectures, essays, pamphlets, court opinions, and other material that he [she] testified he [she] relied on in concluding that he [she] was not a person required to file income tax returns for the years \_\_\_\_\_ and \_\_\_\_\_.]*

This evidence has been admitted solely for the purpose of aiding you in determining whether or not the defendant's failure to timely file tax returns for \_\_\_\_\_ and \_\_\_\_\_ was willful and you should not consider it for any other purpose. You are not to consider this evidence as containing any law that you are to apply in reaching your verdicts, because all of the law applicable to this case is set forth in these instructions.

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*Cheek v. United States*, 498 U.S. 192, 201 (1991)

*United States v. Miller*, 634 F.2d 1134, 1135 (8th Cir. 1980)

**NOTE**

**1** In light of the decision in *Cheek v. United States*, 498 U.S. 192 (1991), care should be taken to ensure that an instruction on the good faith defense does not suggest that a claimed good faith belief as to the requirements of the law or a claimed good faith mistake of law must be objectively reasonable to negate willfulness. However, instructions informing the jury that it may consider the reasonableness of a claimed belief in determining whether a defendant actually held the belief have been held to be consistent with *Cheek*. See, e.g., *United States v. Grunewald*, 987 F.2d 531, 536 (8th Cir. 1993).

GOVERNMENT PROPOSED JURY INST. NO. 140Willfulness -- Failure to File/Good Faith Belief Defense

Willfulness is an essential element of the crime of willful failure to file an income tax return. The word "willfully," used in connection with this offense, means a voluntary, intentional violation of a known legal duty, or otherwise stated, with the wrongful intent not to file a return that defendant was required by law to file and knew he [she] should have filed. There is no necessity that the government prove that the defendant had an intention to defraud it, or to evade the payment of any taxes, for the defendant's failure to file to be willful under this provision of the law.

Defendant's conduct is not "willful" if he [she] acted through negligence, even gross negligence, inadvertence, accident, or mistake, or due to a good faith misunderstanding of the requirements of the law. <sup>1</sup> It should be pointed out, however, that neither a defendant's disagreement with the law, nor his [her] belief that such law is unconstitutional -- no matter how earnestly held -- constitutes a defense of good faith misunderstanding or mistake. It is the duty of all citizens to obey the law whether they agree with it or not.

The only purpose necessary for the government to prove in this case is the deliberate intention on the part of the defendant not to file tax returns, which he [she] knew he [she] was required to file, at the time he [she] was required by law to file them.

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*Cheek v. United States*, 498 U.S. 192, 201 (1991)

*United States v. Ware*, 608 F.2d 400, 404-405 (10th Cir. 1979)

***NOTE***

**1** In light of the decision in *Cheek v. United States*, 498 U.S. 192 (1991), care should be taken to ensure that an instruction on the good faith defense does not suggest that a claimed good faith belief as to the requirements of the law or a claimed good faith mistake of law must be objectively reasonable to negate willfulness. However, instructions informing the jury that it may consider the reasonableness of a claimed belief in determining whether a defendant actually held the belief have been held to be consistent with *Cheek*. See, e.g., *United States v. Grunewald*, 987 F.2d 531, 536 (8th Cir. 1993).

## GOVERNMENT PROPOSED JURY INSTRUCTION NO. 142

Fifth Amendment Defense

The defendant has claimed that he *[failed to file a tax return]* *[failed to provide information on his tax return]* because of his Fifth Amendment right against self-incrimination. A valid exercise of the Fifth Amendment privilege against self-incrimination is a complete defense to a section 7203 charge. **1** A taxpayer is not justified in *[failing to file a tax return]* *[failing to answer questions contained on a tax return]* unless the taxpayer shows substantial hazards of self-incrimination that are real and appreciable, and has cause to perceive such danger. **2**

To support a claim of privilege against self-incrimination, the taxpayer cannot make a blanket Fifth Amendment claim concerning a generalized fear of criminal prosecution. **3** Rather, the taxpayer must assert the privilege specifically in response to particular questions and demonstrate real dangers of incrimination. **4** Thus, the Fifth Amendment privilege does not give a person the right to withhold required information when the information sought does not tend to incriminate him [her].

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**NOTES**

**1** *Garner v. United States*, 424 U.S. 648, 662-62 (1976); *United States v. Malquist*, 791 F.2d 1399, 1401-02 (9th Cir.), *cert. denied*, 479 U.S. 954 (1986)

**2** *Boday v. United States*, 759 F.2d 1472, 1474 (9th Cir. 1985)

**3** *Boday v. United States*, 759 F.2d 1472, 1474-75 (9th Cir. 1985)

**4** *Zicarelli v. New Jersey State Commission of Investigation*, 406 U.S. 472, 478 (1972); *accord*, *Heitman v. United States*, 753 F.2d 33, 34-35 (6th Cir. 1984); *United States v. Verkuilen*, 690 F.2d 648, 654 (7th Cir. 1982) (taxpayer needed to show that his invocation of the privilege was based upon a colorable claim that he was involved in activities for which he could be criminally prosecuted and that such activities would be revealed if he supplied data on his [*tax*] form); *United States v. Leidender*, 779 F.2d 1417, 1418 (9th Cir. 1986); *Stubbs v. United States*, 797 F.2d 936, 983 n. 2, (11th Cir. 1986) (Fifth Amendment does not protect against remote and speculative possibilities). *See also* *Saussy*, 802 F.2d 849, 855 (6th Cir. 1986), *cert. denied*, 480 U.S. 907 (1987) (citing *United States v. Albertson v. SACB*, 382 U.S. 70 (1965))



## GOVERNMENT REQUESTED JURY INSTRUCTION NO. 144

Tax Return Must Contain Sufficient Information

A taxpayer's return which does not disclose sufficient information from which tax liability can be calculated is not a tax return within the meaning of the Internal Revenue Code or the regulations adopted by the Secretary of the Treasury. **1** Therefore, a tax form that contains no information about the defendant's tax status is not a return. **2**

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**NOTES**

**1** *United States v. Porth*, 426 F.2d 519, 523 (10th Cir.), *cert. denied*, 400 U.S. 824 (1970); *United States v. Vance*, 730 F.2d 736, 738 (11th Cir. 1984); *United States v. Schiff*, 612 F.2d 73, 77 (2d Cir. 1979); *United States v. Edelson*, 604 F.2d 232, 234 (3d Cir. 1979); *United States v. Reed*, 670 F.2d 622, 623-624 (5th Cir.), *cert. denied*, 457 U.S. 1125 (1982); *United States v. Mosel*, 738 F.2d 157, 158 (6th Cir. 1984); *United States v. Verkuilen*, 690 F.2d 648, 654 (7th Cir. 1982); *United States v. Green*, 757 F.2d 116, 121 (7th Cir. 1985); *United States v. Upton*, 799 F.2d 432, 433 (8th Cir. 1986); *United States v. Grabinski*, 727 F.2d 681, 686-87 (8th Cir. 1984); *United States v. Kimball*, 925 F.2d 356, 357 (9th Cir. 1991) (*en banc*); *United States v. Malquist*, 791 F.2d 1399, 1401 (9th Cir.), *cert. denied*, 479 F.2d 954 (1986); *United States v. Crowhurst*, 629 F.2d 1297, 1300 (9th Cir.), *cert. denied*, 449 U.S. 1021 (1980); *United States v. Stillhammer*, 706 F.2d 1072, 1075 (10th Cir. 1983); *United States v. Brown*, 600 F.2d 248, 251-252 (10th Cir.), *cert. denied*, 444 U.S. 917 (1979)

**2** *United States v. Klee*, 494 F.2d 394, 397 (9th Cir.), *cert. denied*, 419 U.S. 835 (1974). *See also United States v. Saussy*, 802 F.2d 849, 854-55 (6th Cir. 1986), *cert. denied*, 480 U.S. 907 (1987)